

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1779 (PCB IN 04-02) FL Resident & Nonresident Insurance Agents; Surplus Lines Agents
SPONSOR(S): Committee on Insurance
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2588

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance	19 Y, 0 N	Tinney	Cooper
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Current law specifies that any insurance policy sold for property, casualty, or surety in Florida must be signed or countersigned by a licensed agent who is a resident of Florida. This law, in effect, requires an insurance agent licensed by the Department of Financial Services (DFS), whose primary residence is outside of Florida, to have an authorized agent who lives in Florida sign or countersign any general lines policy sold in Florida, even though the nonresident agent is authorized by DFS to sell insurance in Florida. The law also states that the Florida resident agent who countersigns a policy with a nonresident agent is entitled to a portion of the commission earned by the nonresident agent.

In September 2003, the U.S District Court, Northern District of Florida, ruled that certain provisions of the Florida Insurance Code relating to nonresident general and surplus lines insurance agents were unconstitutional, based on the commerce clause in the U.S. Constitution. The decision in the case, *Council of Insurance Agents & Brokers v. Gallagher (Council v. Gallagher)*, 287 F. Supp. 1302 (N.D. Fla. 2003), states that ". . . non-residents who meet the same standards that a state imposes on its own residents, ordinarily may not be barred from plying their trade within the state." The laws determined by the court to be unconstitutional require policies written by nonresident agents to be signed by a resident agent, require the nonresident agent to pay part of his or her commission to the resident agent who countersigns, and prohibit a nonresident agent from selling insurance to Florida residents through the surplus lines market.

The bill conforms various sections of the Florida Insurance Code to the recent decision in the *Council v. Gallagher* lawsuit. Specifically, the law is amended to delete the requirement that nonresident insurance agents who are licensed in Florida offer policies in the state only if they are countersigned by an agent who lives within Florida. Similarly, nonresident agents licensed in Florida no longer will be required to share part of their commissions with the Florida agents who countersign their policies.

Nonresident applicants for licensure in Florida are required by the bill to complete the same continuing education classes required of resident licensees relating to ethics and to entities unauthorized to engage in the insurance business in Florida. The law is amended further to delete the requirement that specifies only Florida residents may be licensed as surplus lines agents within the state. This means that any eligible applicant, regardless of where the applicant resides, may apply to sell surplus lines within the state, if the applicant meets all other requirements specified by law for licensure of Florida residents.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1779.in.doc
DATE: March 16, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

Part III, chapter 624, F.S., a portion of the Florida Insurance Code, contains the general requirements an insurer must follow to receive a certificate of authority to transact business in Florida. The Department of Financial Services (DFS) regulates the insurance industry in Florida.

In September 2003, the U.S District Court, Northern District of Florida, ruled that certain provisions of the Florida Insurance Code relating to nonresident general and surplus lines insurance agents were unconstitutional, based on the commerce clause in the U.S. Constitution. The decision in the case, *Council of Insurance Agents & Brokers v. Gallagher*, (*Council v. Gallagher*) stated that ". . . non-residents who meet the same standards that a state imposes on its own residents, ordinarily may not be barred from plying their trade within the state." The laws determined by the court to be unconstitutional require policies written by nonresident agents to be signed by a resident agent, require the nonresident agent to pay part of his or her commission to the resident agent who countersigns, and prohibit a nonresident agent from selling insurance to Florida residents through the surplus lines market. The Florida Insurance Code is amended by the bill to conform to the federal court's decision in *Council v. Gallagher*, although the bill amends other sections of the Florida Insurance Code, as well.

Section 624.425, F.S., specifies that any insurance policy sold for property, casualty, or surety in Florida must be signed or countersigned by a local producing agent who is a resident of Florida. This law, in effect, requires that an insurance agent authorized by DFS, whose primary residence is outside of Florida, to have an authorized agent who lives in Florida to sign or countersign a policy sold in Florida, even though the nonresident agent is authorized by DFS to sell insurance in Florida. The law also states that the Florida resident agent who countersigns a policy with a nonresident agent is entitled to a portion of the commission earned by the nonresident agent.

According to DFS, the law requiring a resident agent to countersign policies sold by a nonresident agent was originally written to provide protection and security to Florida consumers. Requiring a Florida agent to countersign a policy sold by a nonresident agent presumably helps ensure that the specifics of the Florida Insurance Code and its accompanying regulations are followed as part of the sale by the nonresident agent who conducts business within Florida.

Continuing Education Classes

Section 626.2815, F.S., requires that a person licensed to sell insurance in Florida must complete 24 hours of continuing education every 2 years in classes approved by DFS. Current law specifies that 3 hours of continuing education cover ethics and 2 hours must relate to entities unauthorized to engage

in the insurance business. Under the bill, *nonresident*, as well as resident, insurance agents are required to complete the continuing education hours for ethics classes and for classes about entities unauthorized to engage in the business of insurance.

Changes Proposed by the Bill

The law is amended by the bill to delete the requirement that nonresident insurance agents who are licensed in Florida offer policies in the state only if they are countersigned by an agent who lives within Florida. Similarly, nonresident agents licensed in Florida no longer will be required to share their commissions with the Florida agent who countersigns their policies. Various other parts of the Insurance Code also are amended to conform to this change. The law is similarly amended to clarify that a nonresident agent may maintain an insurance agency in Florida or may own an interest in an agency located in Florida. Under such circumstances, the licensed nonresident agent is required by the bill to conform to the same laws, regulations, and requirements imposed upon licensed agents who are residents of Florida.

Surplus Lines Insurance

There are some types of specialized risks that general lines policies cannot cover. For example, special events, such as concerts or major sports exhibitions, may not be eligible for coverage by licensed general lines insurers. Other popular examples that can be covered only by the surplus lines market include 1940s movie star Betty Grable's legs or late pianist-entertainer Liberace's hands.

Under current law, surplus lines insurance is governed by ss. 626.913 through 626.938, F.S. When insurance coverage is not available among licensed general lines insurers, the insurers may seek coverage in the surplus lines market. The law requires the general lines agent to make a diligent effort to procure the desired coverage from authorized agents. A diligent effort is defined by law to mean seeking and being denied coverage from at least three authorized agents. Surplus lines insurers also are regulated by the state, but to a lesser degree than general lines insurers.

Section 626.927, F.S., outlines the licensing requirements for surplus lines agents. Under current law, a *Florida resident* may apply to DFS for approval to sell surplus lines policies only after receipt of a Florida license to sell general lines coverage, including surety, property, and liability policies. Additionally, an applicant for a surplus lines license also must have worked with a surplus lines insurer for at least 1 year within the 4 years previous to applying for a license to sell surplus lines. If an applicant does not possess the 1 year of experience, he or she must have completed 60 hours of coursework and passed a written examination specific to surplus lines.

Both the coursework and the examination must be approved by DFS. According to DFS, Florida is one of only ten states that require a surplus lines agent first to be licensed as a general lines agent, then to have 1 year of experience in the surplus lines market or to have passed the surplus lines licensing examination. DFS reports that most states require either licensure as a general lines insurer, experience in the surplus lines market, or successful passage of an approved exam.

In September 2003, the U.S District Court, Northern District of Florida, ruled in *Council v. Gallagher*, that it is unconstitutional for Florida to require that surplus lines agents be residents of the state. The Court stated that "non-residents who meet the same standards that a state imposes on its own residents, ordinarily may not be barred from plying their trade within the state." One of the laws determined by the court to be unconstitutional prohibits a nonresident agent, even one who otherwise may qualify for a surplus lines license, from selling insurance to Florida residents through the surplus lines market. This provision is repealed by the bill.

Changes Proposed by the Bill

The bill specifies that both Florida residents and nonresidents must meet the same licensure requirements in order to be licensed by DFS to place surplus lines policies within Florida. A nonresident applicant for a surplus lines license in Florida is authorized by the bill to sell only those types of insurance that the licensee may sell in his or her home state.

The bill also specifies that a nonresident licensee who relocates to Florida as his or her home state may continue to sell insurance for 90 days under the license issued by the licensee's former home state. Once a licensee relocates to Florida as his or her home state, the licensee must become licensed as a resident agent in Florida within the 90-day period.

A nonresident surplus lines licensee is required by the bill to maintain records of policies, contracts, and policy holders within the licensee's home state in the same manner the licensee is required to maintain records within Florida's borders. If the licensee fails to maintain the records specified by law, or if the records are removed from the licensee's home state, DFS is authorized either to deny or revoke authority for the licensee to offer surplus lines in Florida.

DFS will verify the licensure status of a nonresident surplus lines agency through the producer database maintained by the National Association of Insurance Commissioners.

The Florida Surplus Lines Service Office

The Florida Surplus Lines Service Office (the Office) is created by s. 626.921, F.S., as a nonprofit association overseen by a Board of Governors comprised of nine members. Seven of the nine board members must be affiliated with the surplus lines industry. The Office is directed to oversee the surplus lines industry in Florida and to provide protection of the general public with respect to the placement of surplus lines policies. The Office is authorized by law to collect fees from licensed surplus lines agents, based upon the premiums collected, in order to pay the administrative and other costs associated with the Office.

The bill clarifies that the Office may collect fees from resident as well as nonresident surplus lines licensees. The Office also is authorized by the bill to enter into lawsuits on behalf of DFS when so requested by the department. The Office is required by the bill to pay all expenses associated with such lawsuits if the costs are not recoverable as part of the suit.

C. SECTION DIRECTORY:

Section 1 Amends s. 624.425, F.S., to delete the requirement that insurance policies sold in Florida by nonresident general lines insurance agents be countersigned by an agent who is a Florida resident.

Section 2 Amends s. 624.426, F.S., to conform an exemption from the countersignature law to the change made in Section 1.

Section 3 Amends s. 626.025, F.S., to eliminate the reference to the prohibition against nonresident general lines agents having a place of business in Florida or a pecuniary interest in a Florida agency from the list of consumer protections in current law.

Section 4 Amends s. 626.2815(3), F.S., to require nonresident licensees to take the same continuing education classes relating to ethics and entities unauthorized to engage in the insurance business as are required of resident licensees.

Section 5 Amends s. 626.741, F.S., to eliminate the prohibition against nonresident general lines agents having a place of business in Florida or a pecuniary interest in a Florida agency; eliminates the

requirement that nonresident general lines agents be accompanied by a resident agent if the nonresident agent comes into Florida to solicit Florida residents; and eliminates the requirement that nonresident general lines agents pay part of their commission to the Florida agent who countersigns the policy. This section is also amended to clarify that nonresidents are not required to have an office in Florida, although current law requires resident agents to maintain an office in the state.

Section 6 Amends s. 626.752, F. S., to allow insurers to furnish application forms and related insurance documents to nonresident agents in the same manner as resident agents. The forms and related documents are used in brokering insurance with an insurer with which the agent does not hold an appointment.

Section 7 Amends s. 626.753, F. S., to delete references to nonresident and resident agents sharing commissions.

Section 8 Deletes a subsection of s. 626.792, F.S., to eliminate the prohibition against a nonresident life insurance agent having a place of business in Florida or being an officer, director, stockholder, or partner in a Florida agency.

Section 9 Deletes a subsection of s. 626.835, F.S., to eliminate the prohibition against a nonresident health insurance agent having a place of business in Florida or being an officer, director, stockholder or partner in a Florida agency.

Section 10 Creates s. 626.9272, F.S., to provide for the licensing and regulation of nonresident surplus lines insurance agents. Authorizes DFS to issue a surplus lines license to a person who is licensed as a general lines and surplus lines agent in his or her home state upon submission of a written application and fee; requires nonresident applicants to meet the same requirements for licensure as are required of Florida residents; limits nonresident agents to selling only the types of insurance in Florida that they are permitted to sell in their home states; provides for use of and transfer of a nonresident's license for 90 days if the agent moves to Florida; provides that nonresident agents are subject to all laws that apply to resident surplus lines agents.

Section 11 Amends s. 626.929, F. S., to eliminate the word "resident" so that nonresidents may engage in surplus lines insurance transactions in Florida.

Section 12 Amends s. 626.930, F. S., to clarify that a nonresident surplus lines agent must maintain records of all surplus lines transactions in his or her office for 5 years in the same manner required of resident agents.

Section 13 Amends s. 626.933, F.S., to allow DFS to authorize the Florida Surplus Lines Service Office to file lawsuits on behalf of DFS; specifies the Office must cover all expenses and costs associated with the suit if the costs are not recoverable through the legal action.

Section 14 Amends s. 926.935, F. S., to conform disciplinary provisions relating to maintenance of records relating to surplus lines in Florida to encompass the records nonresidents must keep in their home states.

Section 15 Provides an effective date of July 1, 2004. This effective date conforms to the federal court order directing DFS to begin accepting applications for nonresident surplus lines agent licenses.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed general lines agents in Florida, i.e., Florida residents, will lose any commissions they collected by countersigning policies sold by licensed agents who do not reside in Florida. The licensed nonresidents will be entitled to keep all of the commissions they earn for policies sold within the state rather than sharing a portion with Florida resident agents.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is granted to the DFS to implement the bill; however, DFS reports that its general rulemaking authority should be sufficient to conform its rules in the *Florida Administrative Code* to the changes made by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.